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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR(S) : Benco et al..
TITLE : METHOD FOR DISPLAYING ROAMING
CHARGE RATE ON MOBILE STATION
APPLICATION NO. : 10/633,787
FILED : August 4, 2003
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EXAMINER : Danh C. Le
ART UNIT : 2683
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ATTORNEY DOCKET NO. : LUTZ 2 00231
Case Name/No. Benco 21-15-15-15-15

TRANSMITTAL OF
APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief - Patents
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Dear Sir:

Applicants transmit herewith one (1) copy of APPEAL BRIEF UNDER 37 C.F.R. §41.37 for the above-referenced patent application.

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Respectfully submitted,

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January 20, 2006

Date

Kristi A. Murphy
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Docket No: LUTZ 2 00231

Benco 21-15-15-15

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Art Unit: 2683

APPEAL BRIEF

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Dear Sir:

Appellants submit this brief in connection with the appeal of the above-identified case.

I. Real Party in Interest (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest in the present appeal is Lucent Technologies Inc., the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. § 41.37(c)(1)(ii))

None.

III. Status of Claims (37 C.F.R. § 41.37(c)(1)(iii))

Claims 1-3, 5-10, and 12-20 are pending in the application, with claims 1-3, 5-10, and 12-20 standing rejected and with claims 4 and 11 having been previously cancelled without prejudice. Appellants note that the Final Office Action dated December 21, 2005 indicates in the Office Action Summary form PTOL-326 that claims 1-3, 5-10, and 12-18 are pending, with no explanation or indication of the status of claims 19 or 20. The Office Action dated November 7, 2005 correctly indicated claims 1-3, 5-10, and 12-

20 as pending, and the subsequent amendment submitted November 22, 2005 did not cancel claims 19 or 20. Appellants further note that the Final Office Action of December 21 indicates on page 6 that claims 19 and 20 are system claims of method claims 8 and 9, respectively, and that claims 19 and 20 were being interpreted as rejected. Therefore, Appellants submit that claims 1-3, 5-10, and 12-20 are currently pending, including claims 19-20, notwithstanding the Office Action Summary form PTOL-326 provided with the Final Office Action of December 21, 2005. The rejection of claims 1-3, 5-10, and 12-20 of the Final Office Action dated December 21, 2005 is appealed.

IV. Status of Amendments (37 C.F.R. § 41.37(c)(1)(iv))

No claim amendments have been made subsequent to the final rejection.

V. Summary of Claimed Subject Matter (37 C.F.R. § 41.37(c)(1)(v))

The subject matter of pending claims 1-3, 5-10, and 12-20 relates to methods and wireless networks in which a roaming charge rate is displayed on a mobile station or a display associated therewith.

Independent claim 1 and dependent claims 2, 3, and 5-10 provide methods for displaying a roaming charge rate on a mobile station, an example of which is described in paragraphs 0018-0022 on pages 4 and 5 of the specification with respect to Fig. 2. Independent claim 1 includes determining if the mobile station is roaming while the mobile station is located in a current geographic area (e.g., paragraph 0018, 54 of Fig. 2), and determining if a roaming charge applies to the mobile station based on the current geographic area (e.g., 56 & 58 of Fig. 2, paragraphs 0018 and 0019). Upon determining that the roaming charge rate applies to the mobile station, a roaming charge rate is communicated to the mobile station (e.g., 60 in Fig. 2, paragraph 0019), such that the roaming charge rate is displayed on a display associated with the mobile station while the mobile station is located in the current geographic area (paragraph 0019, 62 in Fig. 2).

Dependent claim 5 specifies that the method further includes determining the mobile station is roaming while the mobile station is located in a different geographic area (e.g., 64 in Fig. 2, paragraph 0020), and repeating the determination of whether a roaming charge applies to the mobile station (e.g., 56 & 58 of Fig. 2, paragraphs 0018

and 0019), and communicating a roaming charge rate to the mobile station upon determining that the roaming charge rate applies, such that the roaming charge rate is displayed on a display associated with the mobile station (e.g., 60 and 62 in Fig. 2, paragraph 0019).

Dependent claims 2 and 6 further specify that between the determinations of whether the mobile is roaming and whether a roaming rate applies, at least a portion of an existing service plan between the subscriber and the wireless service provider is retrieved from a subscriber database (e.g., 56 in Fig. 2, paragraph 0018).

Dependent claims 3 and 7 provide that the retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area (e.g., 56 in Fig. 2, paragraph 0018):

Dependent claim 8 specifies that the method further includes providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station (e.g., 62 in Fig. 2, paragraph 0019). Dependent claim 9 specifies that the cue is at least one of an audible cue, an indicator cue, and a vibratory cue (paragraph 0019), and dependent claim 10 specifies that the cue is provided for a predetermined time period.

Independent claim 12 and dependent claims 13-16 provide methods (e.g., method 50 in Fig. 2, described in paragraphs 0018-0022 of the specification) for displaying a roaming charge rate on a mobile station. The method of claim 12 includes determining the mobile station is roaming while the mobile station is located in a current geographic area (e.g., paragraph 0018, 54 in Fig. 2), and retrieving at least a portion of an existing service plan between the subscriber and the wireless service provider from a subscriber database (e.g., paragraph 0018, 56 in Fig. 2). Claim 12 further recites determining a roaming charge rate will be incurred by the subscriber when using the mobile station in the current geographic area (e.g., 58 in Fig. 2, paragraph 0019), communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station (e.g., 60 in Fig. 2, paragraph 0019), displaying the roaming charge rate on a display associated with the mobile station while the mobile station is located in the current geographic area (e.g., 62 in Fig. 2, paragraph 0019), determining the mobile station is roaming while the mobile station is located in a different geographic area (e.g., 64 in Fig. 2, paragraph 0020), and repeating these

steps for the different geographic area while the mobile station is powered up (e.g., 56-62 in Fig. 2, paragraphs 0018-0020).

Dependent claim 13 provides that the retrieved portion of the service plan (56 in Fig. 2, paragraph 0018) includes a roaming charge rate associated with the current geographic area. Dependent claim 14 specifies that the method further includes providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station (e.g., 62 in Fig. 2, paragraph 0019), dependent claim 15 specifies that the cue is at least one of an audible cue, an indicator cue, and a vibratory cue (paragraph 0019), and dependent claim 16 specifies that the cue is provided for a predetermined time period.

Independent claim 17 and dependent claims 18-20 involve a wireless network, an example of which is shown in Fig. 1 and described in paragraphs 0014-0017 of the specification. Claim 17 provides that the network includes a mobile station (e.g., mobile 30 in Fig. 1) associated with a subscriber to wireless services from a wireless service provider associated with the wireless network (e.g., network 12, 16 in Fig. 1, paragraphs 0014 & 0015). The network of claim 17 also includes means for determining the mobile station is roaming while the mobile station is located in a current geographic area (e.g., MSCs 18, 26, paragraph 0016), means for displaying a roaming charge rate on the mobile station while the mobile station is located in the current geographic area (e.g., displays associated with mobiles 24, 30 of Fig. 1, paragraph 0015), a subscriber database for storing an existing service plan between the subscriber and the wireless service provider (e.g., database 20 in Fig. 1, paragraph 0016), as well as means for retrieving at least a portion of the existing service plan from the subscriber database and means for determining a roaming charge rate will be incurred by the subscriber when using the mobile station in the current geographic area (e.g., MSC 18, 26 in Fig. 1, paragraph 0016). Claim 17 also recites means for communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station or upon the mobile station entering a new roaming area (e.g., MSC 26 in Fig. 1, paragraph 0016).

Dependent claim 18 specifies that the retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area (paragraph 0016). The network of dependent claim 19 further includes means for providing a cue

to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station, and dependent claim 20 specifies that the cue is at least one of an audible cue, an indicator cue, and a vibratory cue (e.g., mobile 30 of Fig. 1).

VI. Grounds of Rejection to be Reviewed on Appeal (37 C.F.R. §41.37(c)(1)(vi))

A. Whether claims 1-3, 5-10, and 12-20 are unpatentable under 35 U.S.C. § 103 over U.S. Application Publication No. US 2003/0083067 to Hanson in view of U.S. Application Publication No. US 2004/0097220 to McGregor.

VII. Argument (37 C.F.R. § 41.37(c)(1)(vii))

Rejection under 35 U.S.C. § 103 over U.S. Application Publication No. US 2003/0083067 to Hanson (Hanson) in view of U.S. Application Publication No. US 2004/0097220 to McGregor

Claims 1-3, 5-10, and 12-20 stand rejected under 35 U.S.C. §103 as being obvious in view of Hanson in view of McGregor. Appellants submit that no *prima facie* case of obviousness has been asserted, and that claims 1-3, 5-10, and 12-20 are patentably distinct from the proposed combination of Hanson and McGregor because the proposed combination of Hanson with McGregor fails to teach or suggest all the elements of the rejected claims. Moreover, no suggestion or motivation exists for the proposed combination. Appellants therefore request reversal of the rejections thereof under 35 U.S.C. § 103 in view of the following arguments with respect to the indicated claims or groups thereof.

Claim 1

Independent claim 1 recites a method for displaying a roaming charge rate on a mobile station. The method of claim 1 includes, among other acts or events, **communicating a roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station.** This feature of independent claim 1 and the corresponding dependent claims 2, 3, and 5-10 is absent from both cited references Hanson and McGregor, and nothing in the proposed combination would have made the invention obvious to one of ordinary skill in the art at the time it

was made. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP 2143.03 citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Moreover, if an independent claim is nonobvious, claims depending therefrom are also nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

The proposed combination of Hanson with McGregor fails to teach or suggest communicating a roaming charge rate to a mobile station upon determining that the roaming rate applies to the mobile station. As a result, independent claim 1 and dependent claims 2, 3, and 5-10 are patentably distinct from the proposed combination. Hanson appears to provide a roaming solution for prepay and other roaming customers, in which a roaming solution network system verifies that the prepaid wireless subscriber's account balance is sufficient to place or receive a call, translates the account balance into talk minutes, and monitors the call for talk duration. If the prepaid wireless subscriber exceeds the available account balance, the system of Hanson tears down the call in the first negative minute and immediately decrements the prepaid subscriber account so as to minimize credit exposure for the service provider (Hanson paragraph 0019). However, with respect to claim 1, no roaming rate is provided to a mobile station in Hanson. Rather, Hanson describes a Roaming Server 116, a national location register (NLR) 112 and an 800# remote switching unit (RSU) 130 (paragraph 0038), where a market server 122 provides a maximum call duration to the 800# RSU 130. The RSU 130 monitors and times the call, which can then be torn down and disconnected when the maximum call duration has been reached (paragraphs 0049-0051, 0053, and 0057 of Hanson).

The Final Office Action refers to Hanson paragraph 0057 in alleging on page 2 that Hanson teaches communicating a roaming rate associated with the roaming charge that would be incurred to the mobile station. Appellants note that claim 1 calls for communicating a roaming charge rate *to the mobile station*, wherein the referenced paragraph 0057 of Hanson is provided below:

[0057] Once the interface method sequence of FIG. 6 is performed for roaming Regnot, roaming call origination from the wireless roaming subscriber can be provided. Referring to FIG. 7, the

interface message sequence for roaming call origination 700 requiring 2-stage dialing is shown for calls originated after the Regnot sequence of FIG. 6 is performed. The interface messaging sequence begins when the wireless roaming subscriber originates a call 702 at the roaming serving MSC 704. The roaming serving MSC will process the roaming call origination through the centralized 800# RSU 706 via the 1-800 DNIS 708 that was inserted during the Regnot process as shown in FIG. 6. The centralized 800# RSU (call origination RSU) 706 will provide a second dial tone 710 in order to collect the destination digits 712 for making the call connection to the called party. The 800# RSU will then query the Market Server 714 with a rating request message 716 for call validation. The rating request message will provide the MIN of the wireless roaming subscriber and the digits of the destination number. If the Market Server finds that the call validation is positive, the Market Server will send a rating request response message 718 back to the 800# RSU which contains the maximum call duration. Then the centralized 800# RSU connects the call 720 to the destination DN of the party being called. The 800# RSU will monitor the call for pricing 722.

(Hanson paragraph 0057). Clearly this portion of Hanson does not teach or suggest communicating a roaming charge rate *to the mobile station* as set forth in claim 1. Moreover, nothing in the remainder of Hanson appears to teach or in any way suggest this element of claims 1.

Combining Hanson with the teachings of McGregor fails to remedy this deficiency. McGregor provides a mobile phone having an internal accounting program with an updatable rate table and a complex billing algorithm for calculating an account status according to multiple rate structure factors that include charges for roaming. The rate table of McGregor is updated by connecting the mobile phone to a processing unit 14 (Fig. 1) or through wireless communications. However, *the teachings of McGregor do not provide for updating the rate table upon determining that the roaming rate applies to the mobile station as set forth in claim 1*. Rather, the rate schedule of McGregor is updated periodically (paragraph 0010), or during off hours, or when the user applies for an increase in the internal phone account (paragraph 0162). On this point, the Final Office Action (page 6) of December 21, 2005 states "the examiner believes that McGregor teaches a roaming charge to [sic] a mobile station upon determining that the roaming rate applies to the mobile station upon entering the new

roaming area" and refers to paragraphs 0009 and 0010 of McGregor, which are reproduced below:

[0009] The accounting system that provides these features is carried internally in the mobile communication device, for convenience, hereafter called the mobile phone unit. The accounting system includes a complex billing algorithm with multiple factor accounting protocol to account for local charges, roaming charges when the mobile phone unit moves from one zone to another, long distance charges, international charges including country independent local charges, and surcharges which may be per call or rate based. The complex billing algorithm can be expanded to accommodate special charges of service providers or called stations or special discounts or premiums for data transfer calls.

[0010] The complex algorithm is stored within the phone unit, together with a rate schedule. The rate schedule may be periodically updated by a wireless communication with a host or service provider.

(McGregor, paragraphs 0009 and 0010). Clearly, this portion does not teach or suggest communicating a roaming charge rate to a mobile station at the time specified in claim 1, i.e. upon determining that the roaming rate applies to the mobile station. Instead, paragraph 0010 merely indicates that the rate table can be updated periodically, as noted above. Therefore, neither reference, alone or in combination, teaches all the elements of claim 1.

Moreover, there appears to be no suggestion or motivation in McGregor for updating the rate table of the mobile upon determining that a roaming rate applies, since the mobile in McGregor already has all the rates and the billing algorithm can calculate the account status at any time. In this regard, modifying McGregor to resend the rate table upon determining that a roaming rate applies to the mobile would have no benefit. Therefore, absent impermissible hindsight using the disclosure of the present application, there is no teaching or suggestion in either of the references or in the proposed combination thereof for communicating a roaming charge rate to a mobile station upon determining that the roaming rate applies to the mobile station as set forth in independent claim 1. Consequently, no *prima facie* case of obviousness has been established since the proposed combination fails to teach or suggest all the elements of

claim 1, and claim 1 is therefore patentable over the proposed combination of Hanson with McGregor under 35 U.S.C. §103. Reversal of the rejection of claim 1 and the associated dependent claims 2, 3, and 5-10 is therefore requested for at least this reason.

Independent claim 1, moreover, provides that the roaming charge rate is communicated to the mobile station upon determining that the roaming charge rate applies to the mobile station, **such that the roaming charge rate is displayed on a display associated with the mobile station** while the mobile station is located in the current geographic area. Oddly, the Final Office Action fails to address this claim limitation (pages 2 and 3) in rejecting claim 1. Appellants submit that neither Hanson, nor McGregor, nor the proposed combination thereof teach or suggest displaying a roaming charge rate on a display associated with the mobile station. Clearly, the mobiles of Hanson do not display a roaming charge rate, as roaming rates are not even provided to the mobiles of Hanson, as acknowledged on page 2 in the Non-Final Office Action of November 7, 2005. McGregor also fails to teach or suggest this element of claim 1. In this regard, Appellants note that the Non-Final Office Action of November 7, 2005 alleges that McGregor teaches this feature, citing to paragraphs 0179-0181 (reproduced below in the discussion of claims 3 and 7) and the abstract of McGregor. However, the cited paragraphs of McGregor do not teach that roaming charge rates are displayed on a mobile phone, and the Abstract merely indicates that the mobile may display real time account status. Applicants therefore submit that the proposed combination of Hanson with McGregor fails to teach this additional element of claim 1, whereby reversal of the rejection is requested for this additional reason.

A *prima facie* case of obviousness also requires that there be some suggestion or motivation in the references themselves, in the nature of the problem to be solved, or in the knowledge generally available to one skilled in the art to modify the reference or to combine references, as well as a reasonable expectation of success in making the proposed modification or combination. MPEP 2143, citing to In re Kotzab, 217 F.3d 1365, 55 USPQ2d 1313 (Fed. Cir. 2000); In re Fine; Motivation for combining references or modifying references may come from explicit statements in the art, implicit teachings therein, the knowledge of one of ordinary skill in the art, or from the nature of the problem to be solved. In re Thrift, 298 F.3d 1357, 1363, 63 USPQ2d 2002 (Fed.

Cir. 2002). Moreover, the showing of such suggestion or motivation must be clear and particular rather than based on conclusory rationale. In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430 (Fed. Cir. 2002); In re Dembiczak, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). See also Brown & Williamson Tobacco Corp. v. Philip Morris Inc., 229 F.3d 1120, 56 USPQ2d 1456 (Fed. Cir. 2000).

There is no motivation for combining the teachings of Hanson with McGregor as proposed in the Office Action. Hanson appears silent with respect to providing any information to the mobile for aiding a user in deciding whether or not to place or continue a call, and instead provides a network element 130 for monitoring the call with respect to a maximum duration. The mobiles of Hanson, moreover, do not receive or utilize roaming rates. Instead, as Hanson provides a system in which a network element (RSU 130) receives a maximum call duration from a market server (122), and then monitors and times the call. This network element of Hanson ends a call if the maximum duration is exceeded and decrements the prepaid subscriber account so as to minimize credit exposure for the service provider (Hanson paragraph 0019). Thus, the system of Hanson would appear to a person of ordinary skill in the art as directed to system-based monitoring of prepaid subscriber usage to minimize credit exposure for the service provider, rather than suggesting systems for aiding the subscriber in making decisions on mobile usage, and Hanson thus provides no suggestion or motivation for combination with the teachings of McGregor or other modifications to provide rate information for display on a mobile.

McGregor, on the other hand, appears to provide an on-board accounting program including an updatable rate table, which, if incorporated into the mobiles of Hanson, would not enhance the ability of Hanson's network-based system to monitor and control the service provider's credit exposure for prepaid subscribers. Conversely, the mobile-based system of McGregor would not be improved in any way by co-existence with the system-based monitoring of Hanson. On this point, the Final Office Action asserts on page 3 that it would have been obvious to provide the teachings of McGregor into the system of Hanson in order to allow the user conditions to be better determined for making or accepting a call with new rates. However, the rate table of McGregor would presumably already be in the mobile when any such decision is to be made by the subscriber, and therefore the proposed combination would not make the

user conditions better known to the subscriber. Thus, the references would be appreciated by a person of ordinary skill in the art as providing no suggestion or motivation for attempting the proposed combination. Rather, these references are ambivalent at best, and certainly fail to provide clear and particular suggestion or motivation, as is needed to support a *prima facie* case of obviousness.

Therefore, the proposed combination fails to teach or suggest all the elements of independent claim 1, and there is no suggestion or motivation for combining Hanson with McGregor in the manner proposed in the rejection. Consequently, no *prima facie* obviousness showing has been made, and Appellants request reversal of the rejection of claim 1 and dependent claims 2, 3, and 5-10 under 35 U.S.C. §103.

Claims 2 and 6

The methods of dependent claims 2 and 6 further provide that between the determinations of whether the mobile is roaming and whether a roaming rate applies, at least a portion of an existing service plan is retrieved from a subscriber database. With respect to claim 2, the Final Office Action at page 3 asserts that the proposed combination of Hanson with McGregor teaches this claim element, and refers to figure 2, 122, presumably in reference to the market server 122 of Hanson. As best understood by Appellants, however, the market server 122 of Hanson is queried at 306 in Fig. 3 for call validation, as described in Hanson paragraphs 0049 & 0050, reproduced below:

[0049] Once the Regnot process is performed in accordance with the call flow diagram of FIG. 2, call origination from a wireless roaming subscriber can be attempted. Referring to FIG. 3 which shows the call flow diagram for call origination by the wireless roaming subscriber. FIG. 3 is representative of call origination in a telecommunication network where only 2-stage dialing is supported. This is due to the version of the SS7 network or like network where origination request messages are not fully supported. The wireless roaming subscriber originates a call 302 by entering a party's number and sending the requested number from the mobile station 104. This attempted call origination by the wireless roaming subscriber is routed to the roaming serving MSC 106 and the roaming serving MSC routes the call attempt 304 to the centralized 800# RSU (call origination RSU) 130 by out dialing the 1-800 DNIS number (hot line number) received during

registration. **Once the 800# RSU receives the call attempt it can collect the requested party's DN and the MIN 306 from the wireless roaming subscriber (can be obtained by second stage dialing) and query 306 the Market Server 122 for call validation. If call validation is positive 308 the Market Server forwards this maximum call duration to the centralized 800# RSU 130.** The centralized 800# RSU then connects the call 310 to the requested party's destination DN. The centralized 800 # RSU can monitor the call to indicate the call has been connected and begins the timing of the call from the time the call was first routed to the 800# RSU. The call can be torn down and disconnected when the call either disconnects at the originating MSC or terminating instrument or when the maximum call duration has been reached.

[0050] The call record is communicated to 312 the Market Server. The advantages of utilizing the Market Server 122 in combination with the 800# RSU 130 as described above is that the call can be monitored and controlled by a central 800# RSU for real-time account billing without need for roaming platforms local to the Roaming Provider's Serving MSC.

(Hanson paragraphs 0049 & 0050, emphasis added). Appellants submit that the querying of the market server 122 and the forwarding by the market server 122 of the maximum call duration does not constitute retrieving at least a portion of an existing service plan from a subscriber database as set forth in claims 2 and 6. Furthermore, the Office Action does not indicate any other portions of Hanson or McGregor or assert any proposed modifications of Hanson or McGregor with respect to these claims. Appellants therefore submit that no *prima facie* case of obviousness has been presented since the proposed combination does not appear to teach the features recited in claims 2 and 6, and respectfully request reversal of the rejection of these claims under 35 U.S.C. §103.

Claims 3 and 7

The Final Office Action rejected dependent claims 3 and 7, asserting that the proposed combination of Hanson with McGregor teaches that the retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area. In rejecting claim 3, reference is made on page 3 of the Final Office Action to paragraph 0048, without indicating whether the reference is to Hanson or McGregor.

McGregor paragraph 0048 provides "PP sends back an ACK to HOST", and thus does not appear relevant to claim 3 (or to claim 7). Hanson paragraph 0048 provides:

The NLR can then send the location information for the wireless roaming subscriber 210 to the Roaming Server 116 over the TCP/IP link. The Roaming Server can then update the location information for the wireless roaming subscriber and in turn forwards the location information for the subscriber 212 to the Market Server 122. The Roaming Server then confirms the location message to the NLR. Again please note that the NLR can modify the Regnot return result message before forwarding it back 214 to the roaming serving MSC. The NLR can replace the HLR MSCID with the NLR MSCID. The NLR can also set the origination trigger's field to all-call attempts which will invoke an origination request message to the NLR when the wireless roaming subscriber makes a call. The NLR can also set the termination restriction code to 1, or other appropriate code number, to deny all termination such that no incoming calls will be delivered to the wireless roaming subscriber.

(Hanson paragraph 0048), where NLR is a National Location Register. This paragraph clearly does not teach a method as set forth in claim 3 (or claim 7), and in particular, teaches nothing with respect to a retrieved portion of the service plan including a roaming charge rate associated with the current geographic area of a mobile, and Appellants note that the cited paragraph does not even mention roaming charge rates. Appellants therefore submit that the rejection of claim 3 is unsupported and no *prima facie* obviousness case has been provided, as there appears to be no teaching or suggestion of the features of claim 3 in the cited portions of the reference. In this regard, Appellants further note that the subsequent paragraph 0049 of Hanson (cited above in the discussion of claims 2 and 6) refers to the market server 122 forwarding a maximum call duration, but does not mention roaming charge rates. Appellants therefore request reversal of the rejection of claim 3 under 35 U.S.C. §103, as no proper assertion has been provided regarding how the proposed combination of Hanson with McGregor allegedly teaches the claim elements and no indication of any alleged motivation or suggestion for making the proposed combination has been provided.

With respect to the rejection of dependent claim 7, the Final Office Action refers at page 4 to McGregor paragraphs 0179-0181. These paragraphs, as well as the subsequent paragraphs 00182 and 00183 are provided below:

[0179] **Ease Access Per Minute Charge**--This rate is added to every telephone call made. This is the base rate for the telephone call. The only way this rate would not be added in is if the Billing Delay had not been reached.

[0180] **Additional Per Minute Long Distance Charge**--This rate is added upon the Base Access rate when the call placed is classified as a long distance call.

[0181] **Additional International Per Minute Charge**--This rate is added upon the Base Access rate when the call placed is classified as an international call.

[0182] **Additional Roaming Per Day Charge**--This rate is added upon the Base Access rate when the call is a roaming call and this charge has not been already been applied today.

[0183] **Additional Roaming Per Minute Charge**--This rate is added upon the Base Access rate and possible the Additional Roaming Per Day Charge when the call is a roaming call.

(McGregor paragraphs 0179-0183, emphasis added). Paragraphs 00179-00181 cited in the Office Action do not appear relevant to roaming charge rates. Paragraphs 00182 & 00183 refer to roaming charges, which are also listed in the table of McGregor paragraph 0206. However, referring also to paragraphs 0162-0165, paragraphs 00166 through 0189 of McGregor appear to list configuration data for a call record configuration structure that allows the billing data to be established for calculating charges, and Appellants' understanding is that these data structures and field definitions refer to the calculation or accounting algorithm in the mobile itself, and do not reflect the contents of a retrieved portion of a service plan. Therefore, Appellants submit that the cited paragraph references and the remainders of Hanson and McGregor do not appear to teach or suggest the features of claims 3 and 7, and that no *prima facie* case of obviousness has been provided, whereby reversal of the rejections thereof is requested under 35 U.S.C. §103.

Claim 5

The method of dependent claim 5 further includes determining the mobile station is roaming while the mobile station is located in a different geographic area, and repeating the determination of whether a roaming charge applies to the mobile station and communicating a roaming charge rate to the mobile station upon determining that the roaming charge rate applies, such that the roaming charge rate is displayed on a display associated with the mobile station, an example of which is illustrated and described with respect to 64 in Appellants' Fig. 2. This claim calls for repeating the communication of a roaming charge rate to a mobile station upon determining that the roaming charge rate applies, which is initially recited in independent claim 1 discussed above. Appellants submit that neither Hanson, nor McGregor, nor the proposed combination thereof teaches or suggests repeating the communication of a roaming charge rate to a mobile station upon determining that the roaming charge rate applies while the mobile station is located in a different geographic area as per claim 5. Appellants further reiterate that no teaching or suggestion is found or asserted for an initial communication of a roaming rate to the mobile upon determining that the rate applies, as discussed above with respect to claim 1. Moreover, the rejection on page 3 of the Office Action cites to no sections of Hanson or McGregor that allegedly teach the features of claim 5. Appellants therefore submit that no *prima facie* case of obviousness has been established since the combination does not teach all the elements of claim 5, and request reversal of the rejection of this claim under 35 U.S.C. §103.

Claims 8-10

Claim 8 depends from claim 5, and provides that the method further includes providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station. Appellants note that the Non-Final Office Action of November 7, 2005 indicated that claim 8 would be allowable if rewritten in independent form, and stated on page 5 (with respect to claims 8, 14, and 19) that "the combination of Hanson and McGregor either alone or in combination fails to teach providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station". Appellants agree. In rejecting claim 8,

however, the current (Final) Office Action at page 4 states "McGregor paragraph 0208, the user programs the alert when the [sic] approach the new rate".

McGregor paragraph 0208 states "The user should be notified by a tone or set of tones in the earpiece and on the phone's screen or by the warning lights if there is less than 5 minutes of air time left at the current rate of use." Clearly, the tone(s) and warning lights referred to in this portion of McGregor do not teach or suggest that a new roaming charge rate is displayed on the mobile station as set forth in claim 8, but instead indicate that less than 5 minutes of air time remains. Appellants further note that the Abstract of McGregor indicates that the mobile debit phone has a signal for alerting the user of account status which is preferably a display of real time account status, but the Abstract does not teach or in any way suggest that the user is provided with a cue indicating a new *roaming charge rate* is *displayed* on the mobile station. Therefore, combining Hanson and McGregor does not appear to teach or suggest all the features of claim 8 or claims 9 and 10 depending therefrom.

Claims 9 and 10 depend from claim 8, with claim 9 specifying that the cue is at least one of an audible cue, an indicator cue, and a vibratory cue, and with claim 10 specifying that the cue is provided for a predetermined time period. With respect to dependent claims 9 and 10, the Final Office Action refers to paragraph 0026, again without indicating whether the reference is to McGregor or Hanson. Paragraph 0026 of Hanson is in the BRIEF DESCRIPTION OF THE DRAWINGS section, and states "[0026] FIG. 5 is a call flow diagram of call delivery at the roaming serving MSC to the roaming subscriber;", which does not appear relevant to claims 8-10. Paragraph 0026 of McGregor provides:

[0026] Airway communication is provided through the antenna 36, which is connected to an RF transceiver connected to the processor 56 and to an analog audio circuit 68 with an ear phone output 70 and a microphone input 72. The audio circuit 68 is also connected to the processor 56 for audio output of touch-tones, warning signals and the like. The phone unit 30 includes DTMF decoder chip 72 and a keypad 76 for data entry, such as telephone numbers, and DTMF signals for code dialogues with the central processor over the airways. Preferably, **the phone unit 30 includes a LCD display screen 33 as noted and a series of green, yellow and red LEDs 34 to visibly warn of a forced termination of a call because of loss of credit or the like, with**

yellow providing a five minute warning light, for example. Audio warnings are transmitted through the earphone 74. The phone unit 30 is powered by a battery pack 78.

(McGregor paragraph 0026, emphasis added). While this portion of McGregor teaches that the mobile 30 has a display and an earphone, there is no teaching or suggestion of *a cue indicating a new roaming charge rate is displayed* on the mobile station (claims 8-10) or that the cue is provided for a predetermined time period (claim 10). Therefore, Appellants request reversal of the rejection of claims 8-10 since the proposed combination fails to teach all the elements thereof, wherein no *prima facie* case of obviousness has been asserted under 35 U.S.C. §103.

Claim 12

Independent claim 12 and the corresponding dependent claims 13-16 provide methods for displaying a roaming charge rate on a mobile station, wherein claim 12 includes **communicating a roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station**. As discussed above, neither Hanson, nor McGregor, nor the combination of these references teaches or in any way suggests communicating a roaming charge rate to a mobile station upon determining that the roaming rate applies to the mobile station. For this reason alone, therefore, claim 12 and dependent claims 13-16 are nonobvious. Appellants note, in this regard, that the Final Office Action at pages 4 and 5 appears to insinuate that step d) of claim 12 somehow involves a home MSC (on page 5, step d) states "communicating the roaming charge to the home MSC"). Appellant is unsure whether this error reflects a misreading of claim 12 or is intended to somehow relate to the Hanson reference. However, to clarify, Appellants point out that method claim 12 provides (among other things) communicating a roaming charge rate to the mobile, with step d) of claim 12 reciting "communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station;". Appellants therefore wish to point out that the Office Action fails to indicate how either of the references, alone or in combination, teach this feature of claim 12, whereby no *prima facie* showing of obviousness has been presented. Further in this regard, the citation to paragraphs 0009-0010 on page 5 of the Final Office Action fails to provide

the required showing, as this portion of McGregor is not relevant to communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station, but rather, merely indicates that the rate table can be updated periodically. As the proposed combination fails to teach or suggest all the claim elements, no *prima facie* showing has been made and claim 12 is patentable over these references.

Moreover, as discussed above in connection with claim 1, there is no motivation for combining the teachings of Hanson with McGregor as proposed in the Office Action. Consequently, for this additional reason, no *prima facie* case of obviousness has been established with respect to claim 12 or its dependents and these claims are patentably distinct from the proposed combination.

Claim 12 also recites **displaying the roaming charge rate on a display associated with the mobile station** while the mobile station is located in the current geographic area. As discussed *supra*, neither Hanson, nor McGregor, nor the proposed combination thereof teach or suggest displaying a roaming charge rate on a display associated with the mobile station. Claim 12 is thus patentably distinct from the proposed combination for this additional reason.

Claim 12 further recites determining the mobile station is roaming while the mobile station is located in a different geographic area, and repeating steps b) - e) for the different geographic area while the mobile station is powered up. As discussed above with respect to claim 5, neither Hanson, nor McGregor, nor the proposed combination thereof teaches or suggests repeating the communication of a roaming charge rate to a mobile station upon determining that the roaming charge rate applies while the mobile station is located in a different geographic area, whereby claim 12 is patentably distinct for this further reason.

Appellants therefore request reversal of the final rejection of claim 12 (and claims 13-16) under 35 U.S.C. §103.

Claim 13

Claim 13 depends from claim 12, and further provides that the retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area. As discussed above in connection with claims 3 and 7, Hanson and

McGregor, alone or in combination, fail to teach or suggest this claim element. The Office Action at page 5, cites to McGregor paragraph 0028 in rejecting claim 13. McGregor paragraph 0028 provides:

[0028] The phone unit 30 when received from the manufacturer includes a fixed ESN (electronic serial number) unique to each phone. To be functional, the phone unit is programmed and this may be accomplished individually, as described in U.S. Pat. No. 5,325,418 or in batch mode as described in the referenced application. The existing ESN and GIM (group identification mark) are read and stored and the NAM (number assigned module) is run, assigning the MIN (mobile identification number), SID (site identification number) and other parameters to activate a phone unit for general use. The MIN is the assigned telephone number for the unit and should be one of the last numbers assigned, if step programming is accomplished to preserve a working inventory of available MINS. Step programming may be desired where a batch of phones are programmed and assigned to a service provider identified by SID, which then assigns a phone to a customer at the service provider's location.

(McGregor paragraph 0028). This portion of McGregor, as well as Hanson paragraph 0048 discussed above in connection with the rejection of claim 3 and McGregor paragraphs 0179-0181 discussed above with respect to the rejection of claim 7, fail to teach or suggest that the retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area. Appellants therefore request reversal of the rejection of claim 13 under 35 U.S.C. § 103 as no *prima facie* showing of obviousness has been made and claim 13 is patentably distinct from the proposed combination of Hanson with McGregor.

Claims 14-16

Appellants note that claim 14, like claim 8, was indicated in the previous Office Action of November 7, 2005 as allowable if rewritten in independent form, wherein that Office Action stated on page 5 that "the combination of Hanson and McGregor either alone or in combination fails to teach providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station", with which Appellant agrees. The current (Final) Office Action does not appear to

address claims 14-16, except that the Header on page 2 and the Office Action Summary PTOL-326 list claim 14 among the claims rejected. Claim 14 specifies that the method of claim 13 further includes providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station. Dependent claim 15 specifies that the cue is at least one of an audible cue, an indicator cue, and a vibratory cue and dependent claim 16 specifies that the cue is provided for a predetermined time period. Appellants refer to the above discussion of claims 8-10 and submit that neither Hanson, McGregor, nor the combination thereof teach or suggest providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station. Accordingly, it is submitted that no *prima facie* case of obviousness has been presented and the proposed combination fails to render these claims obvious, whereby Appellants request reversal of the rejection of claims 14-16 under 35 U.S.C. § 103.

Claim 17

Independent claim 17 and dependent claims 18-20 involve a wireless network. The Final Office Action asserts on page 5 that claim 17 is a system claim of claim 12, and that therefore claim 17 is interpreted and rejected as set forth as claim 12. Appellants at the outset note that claim 17 is not "a system claim of claim 12". As the Office Action appears to have implicitly applied Hanson and McGregor in rejecting network claim 17, however, Appellants incorporate the above discussion of the proposed combination of these references, and for at least the above reasons, submit that neither Hanson, nor McGregor, nor the proposed combination thereof teaches or suggests all the elements of claim 17, that there is no motivation or suggestion for attempting the proposed combination, as discussed *supra*, that claim 17 is not rendered obvious by the proposed combination, and that no *prima facie* case of obviousness has been asserted in the Office Action in connection with claim 17 and dependent claims 18-20. In particular, Appellants note that the network of claim 17 includes a mobile station with means for determining the mobile station is roaming while in a current geographic area and **means for displaying a roaming charge rate on the mobile station** while in the current geographic area. Neither Hanson, nor McGregor, nor the

proposed combination thereof, teach or suggest means for displaying a roaming charge rate on a display associated with the mobile station.

Claim 17 also recites ***means for communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station or upon the mobile station entering a new roaming area.*** As discussed above in connection with claims 1 and 12, Hanson does not provide for communicating a roaming charge rate to a mobile at all. McGregor provides an on-board accounting program including a rate table, but this table is not communicated to the mobile upon determining that the roaming charge rate applies, as discussed above. Further, Appellants submit that McGregor does not teach or suggest communicating a roaming rate to a mobile upon the mobile station entering a new roaming area, as per claim 17. Rather, McGregor indicates only that the rate table is updated periodically (paragraph 0010), during off hours, or when the user applies for an increase in the internal phone account (McGregor paragraph 0162), and appears silent with respect to the timing specified in claim 17 for communicating a roaming rate to a mobile station. Moreover, as discussed above in connection with claim 1, there is no suggestion or motivation for updating the rate table of the mobile of McGregor upon determining that a roaming rate applies or upon entering a new roaming area, since the mobile in McGregor already has all the rates and the billing algorithm can calculate the account status at any time, wherein modifying McGregor to resend the rate table upon determining that a roaming rate applies or upon entering a new roaming area would have no benefit, and there would be no reason to store the rate table in the mobile. Reversal of the rejection of independent claim 17 is therefore requested under 35 U.S.C. § 103.

Claim 18

Dependent claim 18 specifies that the retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area. The Office Action rejected claim 18, stating that this claim was interpreted and rejected the same as claim 13. Appellants refer to the above discussion of claims 3, 7, and 13, and reiterate that the proposed combination of Hanson with McGregor fails to teach or suggest that the retrieved portion of the service plan includes a roaming charge rate

associated with the current geographic area. In the rejections of claims 3, 7, and 13, the Office Action make references to paragraph 0048 (apparently of Hanson), McGregor paragraphs 0179-0181, and McGregor paragraph 0028, reproduced and discussed above. As previously noted, the referenced portions of Hanson and McGregor fail to teach or suggest that a retrieved portion of the service plan includes a roaming charge rate associated with the current geographic area, whereby the implicit grounds for rejecting claim 18 on page 5 of the current Office Action do not provide a *prima facie* case of obviousness. Moreover, the proposed combination of Hanson with McGregor does not teach all the elements of claim 18, and there is no motivation for attempting the combination. Appellants therefore request reversal of the rejection of claim 18 under 35 U.S.C. § 103.

Claims 19 and 20

The network of dependent claim 19 further includes means for providing a *cue* to a user associated with the mobile station *indicating a new roaming charge rate is displayed on the mobile station*, and dependent claim 20 specifies that the cue is at least one of an audible cue, an indicator cue, and a vibratory cue. The Final Office Action of December 21, 2005 rejected claims 19 and 20, allegedly as being "system claims" of claims 8 and 9, respectively. Appellants refute this assertion, and also reiterate the above discussion of the shortcomings of the proposed combination of Hanson and McGregor. Appellants also note that the Non-Final Office Action of November 7, 2005 indicated that claim 19 would be allowable if rewritten in independent form, and stated on page 5 that "the combination of Hanson and McGregor either alone or in combination fails to teach providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station". Appellants refer to the above arguments made in connection with claims 8-10 and 14-16, and reiterate that the proposed combination of Hanson with McGregor does not appear to teach or suggest means for providing a *cue* to a user associated with the mobile station *indicating a new roaming charge rate is displayed on the mobile station* as per claim 19 or claim 20, and that there is no motivation or suggestion for attempting the combination. Consequently, no *prima facie* showing has been made, and these

claims are patentably distinct from the proposed combination, whereby Appellants request reversal of the rejection of claims 19 and 20 under 35 U.S.C. § 103.

CONCLUSION

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-3, 5-10, and 12-20 be reversed.

Respectfully submitted,

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VIII. Appendix of Claims (37 C.F.R. § 41.37(c)(1)(viii))

1. A method for displaying a roaming charge rate on a mobile station, the mobile station being associated with a wireless network and a subscriber to wireless services from a wireless service provider associated with the wireless network, the method including the steps:

a) while the mobile station is located in a current geographic area, determining if the mobile station is roaming;

b) determining if a roaming charge applies to the mobile station based on the current geographic area; and

c) communicating a roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station such that the roaming charge rate is displayed on a display associated with the mobile station while the mobile station is located in the current geographic area.

2. The method as set forth in claim 1, between steps a) and b), the method further including:

retrieving at least a portion of an existing service plan between the subscriber and the wireless service provider from a subscriber database.

3. The method as set forth in claim 2, wherein the retrieved portion includes a roaming charge rate associated with the current geographic area.

4. (Cancelled)

5. The method as set forth in claim 1, further including:
 - d) while the mobile station is located in a different geographic area, determining the mobile station is roaming; and
 - e) repeating steps b) and c) for the different geographic area while the mobile station is powered up.
6. The method as set forth in claim 5, between steps a) and b), the method further including:
 - retrieving at least a portion of an existing service plan between the subscriber and the wireless service provider from a subscriber database.
7. The method as set forth in claim 6, wherein the retrieved portion includes a roaming charge rate associated with the current geographic area.
8. The method as set forth in claim 5, step c) further including:
 - providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station.
9. The method as set forth in claim 8 wherein the cue is at least one of an audible cue, an indicator cue, and a vibratory cue.
10. The method as set forth in claim 8 wherein the cue is provided for a predetermined time period.

11. (Cancelled)

12. A method for displaying a roaming charge rate on a mobile station, the mobile station being associated with a wireless network and a subscriber to wireless services from a wireless service provider associated with the wireless network, the method including the steps:

a) while the mobile station is located in a current geographic area, determining the mobile station is roaming;

b) retrieving at least a portion of an existing service plan between the subscriber and the wireless service provider from a subscriber database;

c) determining a roaming charge rate will be incurred by the subscriber when using the mobile station in the current geographic area;

d) communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station;

e) displaying the roaming charge rate on a display associated with the mobile station while the mobile station is located in the current geographic area;

f) while the mobile station is located in a different geographic area, determining the mobile station is roaming; and

g) repeating steps b) - e) for the different geographic area while the mobile station is powered up.

13. The method as set forth in claim 12 wherein the retrieved portion includes a roaming charge rate associated with the current geographic area.

14. The method as set forth in claim 13, step e) further including:
providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station.

15. The method as set forth in claim 14 wherein the cue is at least one of an audible cue, an indicator cue, and a vibratory cue.

16. The method as set forth in claim 15 wherein the cue is provided for a predetermined time period.

17. A wireless network, including:
a mobile station associated with a subscriber to wireless services from a wireless service provider associated with the wireless network;
means for determining the mobile station is roaming while the mobile station is located in a current geographic area;
means for displaying a roaming charge rate on the mobile station while the mobile station is located in the current geographic area;
a subscriber database for storing an existing service plan between the subscriber and the wireless service provider;
means for retrieving at least a portion of the existing service plan from the subscriber database;
means for determining a roaming charge rate will be incurred by the subscriber when using the mobile station in the current geographic area; and

means for communicating the roaming charge rate to the mobile station upon determining that the roaming charge rate applies to the mobile station or upon the mobile station entering a new roaming area.

18. The wireless network as set forth in claim 17 wherein the retrieved portion includes a roaming charge rate associated with the current geographic area.

19. The wireless network as set forth in claim 17, further including:
means for providing a cue to a user associated with the mobile station indicating a new roaming charge rate is displayed on the mobile station.

20. The wireless network as set forth in claim 19 wherein the cue is at least one of an audible cue, an indicator cue, and a vibratory cue.

IX. Evidence Appendix (37 C.F.R. § 41.37(c)(1)(ix))

none

X. **Related Proceedings Appendix (37 C.F.R. § 41.37(c)(1)(x))**

none